



FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF GENERAL COUNSEL

memorandum

TO : Director, Reference Information Center
Chief, Consumer & Governmental Affairs Bureau

FROM : Daniel M. Armstrong
Associate General Counsel

SUBJECT : *Mainstream Marketing Services, Inc.*, a Colorado corporation, *TMG Marketing, Inc.*, a Colorado corporation, and *American Teleservices Association v. FCC & USA*, No. 03-9571 – Filing of a Petition for Review in the United States Court of Appeals for the Tenth Circuit

DATE : August 5, 2003

This is to advise you that, on July 25, 2003, *Mainstream Marketing Services, Inc.*, *TMG Marketing, Inc.*, and the American Teleservices Association (collectively, "Petitioners"), filed a Petition for Review in the U.S. Court of Appeals for the Tenth Circuit, pursuant to 47 U.S.C. § 402(a), of the following order: *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, FCC 03-153 (rel. July 3, 2003). Petitioners resubmitted its Petition for Review to the Court on August 4, 2003, to ensure it was timely-filed under the relevant statutory provisions.

In the order on review, the Commission revised its rules under the Telephone Consumer Protection Act relating to unwanted telephone solicitations. The new rules, among other things, establish a national "do-not-call" registry, address the use of predictive dialers by telemarketers, and require telemarketers to transmit caller identification information, when possible. The grounds on which Petitioners seek relief are that the order on review and the revised rules (1) violate the First and Fifth Amendments to the United States Constitution, and (2) are arbitrary, capricious, and not in accordance with law under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

The Court has docketed this case as No. 03-9571. The attorneys assigned to handle the litigation of this case are Lisa B. Boehley and Susan L. Launer.